STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEALS
Cooper, PJ and Sawyer and Owens, JJ

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant.
_____/

Supreme Court No. 120410-11

Court of Appeals Docket No. 218433

Wayne County Circuit Court
Case No. 98-839763-CK
Hon. Kathleen MacDonald

CONSOLIDATED WITH

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee/
Cross-Appellant,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant/
Cross-Appellee.
_____/

Court of Appeals Docket No. 229448

Court of Claims
Case No. 99-17226-C30
Hon. Lawrence Glazer

BRIEF ON APPEAL – APPELLANT
ORAL ARGUMENT REQUESTED

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STATEMENT OF THE BASIS OF JURISDICTION

Jurisdiction is vested in this Court pursuant to MCR 7.301(A)(2) and MCR 7.302. This appeal arises from the Wayne County circuit court's March 5, 1999 order dismissing plaintiff-appellee's complaint on the ground that the court of claims had exclusive subject matter jurisdiction. Appendix at 69a-70a. The plaintiff-appellee timely appealed from the circuit court's dismissal (appendix at 16a, doc entry 1, 3/22/99), arguing that the circuit court had jurisdiction (appendix at 17a, doc entry 12, 7/21/99). The plaintiff-appellee then re-filed its case in the court of claims. Appendix at 71a-75a.

This appeal also arises from the court of claims' July 28, 2000 order granting defendant-appellant's motion for summary disposition on the substantive merits, and denying plaintiff-appellee's motion for summary disposition on the substantive merits. Appendix at 96a-97a. The plaintiff-appellee timely appealed from the court of claims' order. Appendix at 23a, doc entry 1, 8/28/00.

On October 19, 2000, the court of appeals consolidated the two appeals. Appendix at 18a, doc entry 30, 10/19/00; Appendix at 24a, doc entry 13, 10/19/00. On October 26, 2001, the court of appeals issued a non-unanimous opinion holding that the Wayne County circuit court possessed subject matter jurisdiction and therefore should not have dismissed the case. Appendix at 104a-108a. The opinion also held that the court of claims lacked subject matter jurisdiction and that this rendered its rulings void. *Id* at 106a. The opinion expressly declined to consider the substantive merits of the case. *Id* at n2. Rather, it reversed the judgment of the court of claims and remanded the case to the Wayne County circuit court for consideration of the substantive merits already decided by the court of claims. *Id* at 106a.

On November 16, 2001, the defendant-appellant filed an application with this Court seeking leave to appeal from the October 26, 2001 decision of the court of appeals. On October 30, 2002, this Court granted the application for leave, and directed the parties "to address the jurisdictional issue in the context of MCL 600.6419; MCL 600.6419a and this Court's decision in *Silverman v University of Michigan Board of Regents*, 445 Mich 209 (1994)." Appendix at 111a.

STATEMENT OF QUESTION INVOLVED

I. The court of claims act grants exclusive jurisdiction to the court of claims over all *ex contractu* claims and demands against the state. Parkwood Limited Dividend Housing Association sued the Michigan State Housing Development Authority claiming a contractual right to money that MSHDA holds in certain reserve accounts. Does the court of claims have exclusive subject matter jurisdiction over Parkwood's claim of entitlement to that money?

The defendant-appellant answers "YES."

The plaintiff-appellee answers "NO."

The court of appeals answered "NO."

SUMMARY OF ARGUMENT

Two members of the three-judge court of appeals panel concluded that the court of claims lacked jurisdiction to decide Parkwood's claim to contractual ownership of $1.4 million in reserve accounts held by the Michigan State Housing Development Authority ("MSHDA").

The Court should reverse the opinion of the two-judge majority. The majority erred by construing too narrowly the court of claims act, which grants to the court of claims exclusive subject matter jurisdiction over contractual disputes against the state. This erroneous construction gives rise to three separate and independent bases for reversal. In particular, the majority's construction of the court of claims act conflicts with: (1) the plain language of the court of claims act; (2) the Supreme Court's decision in *Silverman v Univ of Michigan Bd of Regents*, 445 Mich 209; 516 NW2d 54 (1994); and (3) MCR 2.605(A), a rule promulgated by this Court, and the court of appeals' well-reasoned opinion in *77th Dist Judge v Michigan*, 175 Mich App 681, 700; 438 NW2d 333 (1989).

First, in finding that the court of claims lacked jurisdiction, the majority concluded that the court of claims "*only* has subject matter jurisdiction over disputes involving a claim for *monetary damages*." Appendix at 106a (emphasis added). It asserted that the court of claims lacked jurisdiction for the stated reason that Parkwood supposedly "did not request *monetary damages* anywhere in its complaint." *Id.* Although Parkwood's complaint *does*, in fact, seek an award of money by asserting an immediate contractual right to use it to prepay its mortgage with MSHDA (appendix at 67a, ¶ 17), the plain language of the court of claims act does *not* limit the jurisdiction of the court of claims to actions where the plaintiff has phrased its complaint as a request for an award of monetary damages from the state. In fact, the court of claims act makes no mention of "monetary damages." Rather, the court of claims act broadly grants "exclusive"

jurisdiction to the court of claims "[t]o hear and determine *all* claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state ... and any of its agencies." MCL 600.6419(1)(a) (emphasis added).

All contractual claims, including those for monetary damages, fall within the broad statutory definition of "all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state ... and any of its agencies." But, by holding that the court of claims "*only* has subject matter jurisdiction over disputes involving a claim for monetary damages," the court of appeals majority below took a position that was far narrower than the plain language of the court of claims act itself. Had the legislature intended to limit the jurisdiction of the court of claims to claims for "monetary damages," it could have done so. But the legislature did not choose to use the phrase "monetary damages" anywhere in the court of claims act.

Second, in finding that the court of claims did not have jurisdiction, the two-judge majority relied on the notion that "plaintiff's *complaint* only sought a *declaratory judgment*." Appendix at 106a (emphasis added). In *Silverman*, *supra*, this Court rejected the analysis employed by the two-judge majority below, and held that the court of claims has exclusive jurisdiction over contractual claims against the state, even when the plaintiff phrases its complaint as a request for declaratory relief. Parkwood's complaint and other court filings establish that it is, in fact, asserting a contractual claim for money against the state inasmuch as it is asserting both: (1) a non-contingent right to the money so it can actually *use* the money to prepay its mortgage with MSHDA (appendix at 67a, ¶ 17; appendix at 103a); *and* (2) a contingent right to use the money *in the event* it prepays the mortgage (appendix at 68a). Parkwood thus seeks to evade the plain language of the court of claims act by alternatively phrasing its contractual claim for an award of money as a request for declaratory relief. Ignoring

the fact that Parkwood seeks the money now -- in order *to* pay off its mortgage -- and focusing on the fact that Parkwood alternatively seeks the money *in the event* it pays off its mortgage, the court of appeals majority purported to look to the manner in which Parkwood chose to phrase its contractual claim for an award of money, rather than the nature of the action itself. In so doing, the court of appeals majority failed to engage in the analytical process required by this Court in *Silverman*. *Every* claim for a contractual money award necessarily requires a court's determination (or declaration) that money held by one party rightfully belongs to the other. Accordingly, the fact that Parkwood sought, in the alternative, to phrase its claim for money as a demand for declaratory relief is of no jurisdictional moment.

Third, MCR 2.605(A), the declaratory judgment court rule, makes clear that a court may issue a declaratory judgment if it has jurisdiction of the underlying controversy. MCR 2.605(A). Other court rules make clear that a court issuing a declaratory judgment may grant additional relief, such as money damages. *See*, *e.g.*, MCR 2.605(F); MCR 2.601(A). Accordingly, the court of appeals has held in a prior published opinion that the court of claims has jurisdiction if the claim will lend itself to an *eventual* remedy of money damages. *77th Dist Judge*, *supra*, at 700. Parkwood has never denied the fact that if it were granted the relief it seeks, this would result in an eventual, if not immediate, award of money damages from the state.

The Court should reverse the opinion of the two-judge majority for all three of these separate and independent reasons.

STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

I. FACTS

In 1966, the Michigan legislature publicly acknowledged what it called "a seriously inadequate supply of, and a pressing need for, safe and sanitary dwelling accommodations within the financial means of low income or moderate income families or persons...."[1] The legislature addressed this "pressing need" by enacting a new law and creating a new state Authority.

The new law was the State Housing Development Authority Act. Its express "public purpose" was "to finance ... the construction of additional housing for those low or moderate income families and persons who would otherwise be unable to obtain adequate and affordable dwellings...."[2]

The new state Authority was MSHDA, which the Act established as a public body corporate and politic of the State of Michigan.[3] The Act granted MSHDA "all powers necessary or convenient to carry out th[e] act...."[4] It empowered MSHDA to make loans for the construction and long-term financing of housing for persons of low or moderate income.[5] It granted MSHDA the power "[t]o set standards for housing projects that receive loans under th[e] act and to provide for inspections to determine compliance with those standards."[6] And it authorized MSHDA to raise necessary funds by issuing tax-exempt bonds.[7] MSHDA was thus

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[1] MCL 125.1401(1).

[2] *Id.*

[3] *See* MCL 125.1421(1).

[4] MCL 125.1422.

[5] MCL 125.1444(1)(a)(i).

[6] MCL 125.1422(j).

[7] MCL 125.1425-1444. *See also Advisory Opinion re Constitutionality of PA 1966, No 346,* 380 Mich 554, 562; 158 NW2d 416 (1967) (MSHDA powers generally).

enabled to finance low and moderate income housing at lower interest rates than those available from private lenders, and with minimal cash investment from the developers.

To ensure that the benefits of tax-exempt financing accrued to the low and moderate income tenants, and did not simply increase the owners' profits, the Act placed limitations on precisely who could obtain MSHDA loans for constructing low-income housing projects. Developers seeking such loans were required to adopt one of the limited dividend or non-profit forms of organization specifically enumerated in the Act itself. The "limited dividend housing association" is one of those entities.[8]

Parkwood Limited Dividend Housing Association, the plaintiff-appellee, is both a limited partnership and a limited dividend housing association. In 1973, MSHDA extended Parkwood a mortgage loan in the amount of $4,224,403.[9] The loan financed the construction of an apartment complex in Van Buren Township for low and moderate-income residents.[10] The parties entered into this transaction pursuant to the Act. *Id.* In so doing, Parkwood "acknowledge[d] and expressly agree[d] that the Authority [MSHDA] must carry out all of its duties under [the] Act ... to the end that the public purposes of the Act shall be fulfilled...."[11] Parkwood also agreed to subject itself to the ongoing regulation and supervision of MSHDA, and to accept, and impose by its own partnership agreement and various contracts with MSHDA, strict limitations on its owners' return on investment. In exchange, its general and limited partners enjoyed substantial tax benefits, a non-recourse mortgage loan with an effective interest rate of 1%, and annual

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[8] MCL 124.1444(1)(a).

[9] Appendix at 29a, 1st Recital. This was later increased by another $84,487. Appendix at 54a, 1st Recital.

[10] Appendix at 38a, 1st recital.

[11] Appendix at 35a, ¶ 24.

dividends of 6%.[12] Its general partners also received profits from the sale of limited partnership interests, construction fees, and management fees.[13]

In September 1998, twenty-five years after the parties entered into the loan transaction, Parkwood announced that it intended to fully prepay the mortgage loan the following month.[14] It demanded that MSHDA pay it monies that MSHDA holds in certain reserve accounts, asking MSHDA to "state ... whether the ... accounts will applied against the amount due under the mortgage or paid directly to [Parkwood]."[15] When MSHDA indicated that neither event would occur, Parkwood sued MSHDA in Wayne County circuit court on December 11, 1998, seeking the monies that MSHDA holds in the reserve accounts identified in the complaint (the "Disputed Accounts").[16]

The substance of this case turns on enforcement of the terms of section 93(b) of the Act. That provision: (1) limits the distribution that may be made to the owners of the limited dividend housing association; and (2) requires that, "upon the dissolution of the limited dividend housing association, any surplus in excess of those amounts shall be paid to [MSHDA]."[17]

II. MATERIAL PROCEEDINGS

A. The Circuit Court Case

Parkwood first filed in Wayne County circuit court. Appendix at 64a-68a. On MSHDA's motion, the circuit court dismissed the complaint on the ground that the claim was within the

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[12] Appendix at 84a-85a, 88a; Appendix at 48a, § 23(b). *See* MCL 125.1493(b).

[13] Appendix at 82a-87a.

[14] Appendix at 63a.

[15] *Id.*

[16] Appendix at 65a, ¶ 9; 67a, ¶ 17; 68a, p5.

[17] MCL 125.1493(b).

exclusive jurisdiction of the court of claims. Appendix at 69a-70a. Parkwood appealed from the circuit court's dismissal. Appendix at 16a, doc entry 1, 3/22/99, court of appeals case no. 218433.

B. The Court of Claims Case

After dismissal of the circuit court case, Parkwood immediately re-filed its complaint in the court of claims. Appendix at 71a-75a. It subsequently filed an amended complaint. Appendix at 76a-80a. Parkwood never raised the issue of jurisdiction in the court of claims. Rather, Parkwood and MSHDA both engaged in extensive discovery and then filed cross-motions for summary disposition. Parkwood's motion was filed under MCR 2.116(C)(10). Appendix at 10a, doc entries 93-94, 6/27/00. MSHDA's motion was filed under MCR 2.116(C)(8) and (10). Appendix at 11a, doc entries 100-01, 6/28/00. Both parties submitted extensive documentary material, which the court considered.

The court of claims held a hearing on the cross-motions for summary disposition on July 28, 2000. The court announced its opinion from the bench, granting MSHDA's motion and denying Parkwood's motion. Appendix at 89a-95a. The court of claims entered a written judgment on August 14, 2000. Appendix at 96a-97a. Parkwood appealed from the court of claims' judgment. Appendix at 23a, doc entry 1, 8/28/00, court of appeals case no. 229448.

C. Proceedings in the Court of Appeals

On Parkwood's motion, the court of appeals consolidated Parkwood's two appeals. Appendix at 18a, doc entry 30, 10/19/00; Appendix at 24a, doc entry 13, 10/19/00. After the appeals were fully briefed, the parties presented argument on October 9, 2001. In a non-unanimous, unpublished decision issued on October 26, 2001, the court of appeals reversed the dismissal by the Wayne County circuit court, finding that it possessed subject matter jurisdiction and therefore should have decided the case. Appendix at 106a. The majority also held that the

court of claims lacked such jurisdiction, and that its rulings therefore were void. *Id.* It expressly declined to consider the substantive merits of the case. *Id* at 106a n2. Instead, it reversed the judgment of the court of claims and remanded the case to the Wayne County circuit court for consideration of the substantive merits already analyzed and decided by the court of claims. *Id* at 106a.

D. Proceedings in the Supreme Court

On November 16, 2001, MSHDA filed an application with this Court seeking leave to appeal from the court of appeals' October 26, 2001 decision that the circuit court had jurisdiction and the court of claims did not. On December 7, 2001, Parkwood filed an application seeking leave to cross-appeal, requesting that, in addition to deciding the jurisdictional issue, the Court also decide the merits of the case. On December 12, 2001, Parkwood's lawyers filed a motion seeking leave to file an *amicus curiae* brief on behalf of another of their clients, a former limited dividend housing development association now known as Meridian Meadows-Oxford Limited Partnership. The proposed *amicus curiae* brief would have sought to support Parkwood's application for leave to cross-appeal.

On October 30, 2002, the Court issued an order granting MSHDA's application for leave to appeal, stating: "The parties are directed to address the jurisdictional issue in the context of MCL 600.6419; MCL 600.6419a and this Court's decision in *Silverman v University of Michigan Board of Regents*, 445 Mich 209 (1994)." Appendix at 111a. However, the Court's order denied Parkwood's application seeking leave to cross-appeal and Meridian Meadows' application seeking leave to file an *amicus curiae* brief. *Id.*

ARGUMENT

I. STANDARD OF REVIEW

The issue of subject matter jurisdiction turns on questions of interpretation of statutes, which the Court reviews *de novo*. *Lapeer Co Clerk v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002).

II. THE COURT OF APPEALS' MAJORITY OPINION CONFLICTS WITH THE PLAIN LANGUAGE OF THE COURT OF CLAIMS ACT

Two judges on the court of appeals held that the Wayne County circuit court possessed subject matter jurisdiction, and therefore should not have dismissed the case. Appendix at 106a. The court also held that the court of claims lacked subject matter jurisdiction, and therefore should not have decided the case. *Id.*

In reaching this result, the majority held that the court of claims "*only* has subject matter jurisdiction over disputes involving a claim for *monetary damages.*" *Id* (emphasis added). Although it had no choice but to acknowledge that Parkwood's case "*concerned* ownership of certain money," *id* (emphasis in original), the majority concluded that the court of claims lacked jurisdiction because "plaintiff's *complaint* ... did not request *monetary damages*...." *Id* (emphasis added). It stated this rationale for its decision more than once. *Id* ("plaintiff's *complaint* did not request *monetary damages* anywhere in its *complaint*"); *id* at 105a ("[t]he *complaint* did not request *monetary damages*") (emphasis added).

The jurisdiction of the court of claims is set forth in the court of claims act, MCL 600.6401 *et seq*. To ascertain whether the majority of the court of appeals panel reached the correct result, it is necessary to look at the plain and unambiguous language of the court of claims act itself.

The relevant portions of the court of claims act are set forth in two separate sections:

MCL 600.6419 and MCL 600.6419a, the latter of which the legislature added in 1984. We discuss each section below.

A. The Court of Appeals' Majority Opinion Conflicts with the Plain Language of MCL 600.6419(1)(a)

This Court has long recognized the well-established rule that the state cannot be sued without its consent, granted by a legislative enactment. *Greenfield Const Co v Michigan Dep't of State Hwys*, 402 Mich 172, 193; 261 NW2d 718 (1978) (Ryan, J, plurality opinion). Prior to 1939, the legislature permitted suit only against a few selected state agencies and then only for limited periods. *Id* at 195. Save for these scattered exceptions, the state could not be sued because the legislature had failed to give its consent. *Id.*

Then in 1939 the legislature enacted the court of claims act. *Id.* The court of claims act represents a "narrowly limited waiver of suit immunity." *Id* at 197. It is this "[l]egislative waiver of a state's suit immunity ... [that] subjects the state to the jurisdiction of the court." *Id.* This waiver of "sovereign immunity from suit must be strictly construed." *Id.*

Although the court of claims act is a narrowly limited waiver of state suit immunity, within that limited waiver the act *broadly* grants "exclusive" jurisdiction to the court of claims over "all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its ... agencies."

> Except as provided in sections 6419a[18] and 6440,[19] the jurisdiction of the court of claims, as conferred upon it by this chapter, shall be *exclusive*.... The court has power and jurisdiction:

[18] The reference to section 6419a was added to the statute in 1984, when the legislature amended the court of claims act by enacting MCL 600.6419a (1984 PA 212). We discuss MCL 600.6419a in the next section of this brief.

[19] MCL 600.6440 provides that the court of claims may not exercise jurisdiction over claims against the state for which there is an adequate remedy in federal court. That section is not at issue in this case.

> (a) To hear and determine *all claims* and demands, liquidated and unliquidated, *ex contractu* and ex delicto, *against the state and any of its* departments, commissions, boards, institutions, arms, or *agencies*.

MCL 600.6419(1)(a) (emphasis added). Parkwood's complaint against MSHDA meets the prerequisites for invoking the court of claims' exclusive subject matter jurisdiction as set forth in MCL 600.6419(1)(a).

First, Parkwood's action is against a state agency. *Advisory Opinion re Constitutionality of PA 1966, No 346,* 380 Mich 554, 584; 158 NW2d 416 (1967) (MSHDA is "an agency of state government"). Parkwood has never disputed this.

Second, Parkwood's action is a "claim." Parkwood has never disputed this either. Although the court of claims act does not define "claim," this Court has repeatedly said that if a statute does not define a term, courts must give the term its plain and ordinary meaning, and may properly turn to dictionary definitions for guidance:

> When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the statutory language. Undefined statutory terms must be given their plain and ordinary meanings. When confronted with undefined terms, it is proper to consult dictionary definitions.

Cox v Flint Bd of Hosp Mgrs, 467 Mich 1, 18; 651 NW2d 356 (2002). The following decisions of this Court are in accord: *Stanton v City of Battle Creek*, 466 Mich 611, 617; 647 NW2d 508 (2002); *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002); *People v Morey*, 461 Mich 325, 329; 603 NW2d 250 (1999); *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 603-04; 575 NW2d 751 (1998).

The word "claim" is broadly defined as follows:

> *To demand as one's own or as one's right*; to assert; to urge; to insist. Cause of action. *Means by or through which claimant*

> *obtains possession or enjoyment of privilege or thing. Demand for money* or property, *e.g.* insurance claim.
>
> *Right to payment, whether or not such right is* reduced to judgment, liquidated, unliquidated, fixed, *contingent*, matured, *unmatured*, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured....

BLACK'S LAW DICTIONARY at 224 (5th ed 1979) (emphasis added).

Applying that definition here, a "claim" includes an asserted "right to payment," even if the right is "contingent" or "unmatured." *Id.* Nevertheless, in an effort to support the idea that the court of claims lacked jurisdiction, the two-judge majority below relied on the notion that Parkwood's claimed right to payment of money was *contingent* on Parkwood first satisfying its mortgage with MSHDA:

> Indeed, plaintiff's purported entitlement to monetary damages would not result absent a decision to prepay the mortgage, a *contingency* that has yet to occur.

Appendix at 106a (emphasis added). This statement directly conflicts with the plain meaning of the word "claim," which is an asserted "right to payment," even if the right to payment is "contingent" or "unmatured." BLACK'S LAW DICTIONARY, *supra*, at 224.

Equally troublesome, this statement of the court of appeals majority sharply conflicts with the undisputed facts. Although the two-judge majority chose to ignore this, Parkwood's complaint in the circuit court expressly asserts a *non*-contingent right to payment of the money by asserting that Parkwood can "*use* the balance in the accounts," not *if* it first satisfies the mortgage debt, but as a means "*to* partially satisfy the mortgage debt." Appendix at 67a, ¶ 17 (emphasis added). Parkwood's reply brief in its court of claims appeal below similarly states

that the funds "can be *used,*" not *if* it first pays the mortgage, but "*for* ... paying the mortgage." Appendix at 103a, p10 (emphasis added).[20] This also squarely meets the definition of the word "claim": "To demand as one's own or as one's right.... Means by or through which claimant obtains possession or enjoyment of privilege or thing. Demand for money.... Right to payment, whether or not such right is ... contingent[] [or] matured." BLACK'S LAW DICTIONARY, *supra*, at 224. Perhaps it is for these very reasons that Parkwood has never disputed that its action is, in fact, a "claim" against MSHDA.

Third and finally, Parkwood's claims against MSHDA are *ex contractu*. The court of claims act does not define the term, but Black's Law Dictionary defines it as follows:

> From or out of a contract. In both the civil and the common law, rights and causes of action are divided into two classes,--those arising *ex contractu* (from a contract), and those arising *ex delicto* (from a delict or tort).... Where cause of action arises from breech [sic] of a promise set forth in contract, the action is "*ex contractu*"....

BLACK'S LAW DICTIONARY, *supra,* at 508. The court of appeals has defined "*ex contractu*" similarly: "An action is one *ex contractu* when it is derived from (a) an express promise, (b) a promise implied in fact or (c) a promise implied in law." *Pomann, Callanan & Sofen, PC v Wayne Co Dep't of Soc Serv*, 166 Mich App 342, 347 n5; 419 NW2d 787 (1988), quoting *Uptegraff v Home Ins Co*, 662 P2d 681, 684 (Okla 1983). Parkwood has never argued that its claim against MSHDA is not *ex contractu*. To the contrary, Parkwood expressly alleges in its complaints that MSHDA's retention of the disputed funds "would breach the *agreements* of the parties." Appendix at 67a, 74a, 79a, all at ¶ 15 (emphasis added).

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[20] The Court may consider such statements in ascertaining the relief sought by the plaintiff. *See e.g., Minarik v State Hwy Comm'r*, 336 Mich 209, 213; 57 NW2d 501 (1953) (court may consider the complaint, together with testimony at a summary disposition hearing, to determine relief sought).

This Court has emphasized that the judicial branch does not have authority to venture beyond the unambiguous text of a statute. *State Farm Fire and Casualty Co v Old Republic Insur Co*, 466 Mich 142, 145; 644 NW2d 715 (2002). If the statutory language is clear and unambiguous, then the court must conclude that the legislature intended the meaning it clearly and unambiguously expressed, and must enforce the statute as written. No further judicial construction is permitted. *Hesse v Ashland Oil, Inc*, 466 Mich 21, 30; 642 NW2d 330 (2002). A court must not read anything into an unambiguous statute that is not within the manifest intent of the legislature as derived from the words of the statute itself. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Nor may a court speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the legislature. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002).

The two-judge majority ignored these rules of statutory construction, and read into the court of claims act an unstated requirement that, in order for the court of claims to have jurisdiction, the plaintiff must include on the face of the complaint an express request for a non-contingent award of "monetary damages." The plain language of the court of claims act says no such thing. Indeed, the legislature did not use the terms "monetary damages" or "money damages" anywhere in the court of claims act. The fact that the legislature omitted those words from the court of claims act is by no means insignificant, especially when one considers the fact that the legislature has clearly shown that it knows how to use the term "monetary damages"[21]

[21] *See, e.g.*, MCL 211.78l(2) ("court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section" dealing with extinguished recorded or unrecorded property interests); MCL 211.79a(3) (limiting property owners to actions to recover "monetary damages"); MCL 450.2209(c) (articles of incorporation may protect directors or officers from personal liability for "monetary damages" for breach of fiduciary duty); MCL 450.2541(3) (volunteer director of corporation is personally liable only for "monetary damages"); MCL 450.2556 (precluding "claim for monetary damages"); MCL 487.3325(3)
Continued on next page.

and the term "money damages"[22] when it wishes to do so.

In contrast to the majority's construction of the court of claims act, the plain language of the act broadly phrases the court of claims' jurisdiction to include actions seeking a right to payment from the state, even if the alleged right is contingent or unmatured.

The legislature had a reason for broadly phrasing the jurisdiction of the court of claims to include all claims *ex contractu* and *ex delicto* against the state. Indeed, one commentator has observed that the purpose of the court of claims is "to provide a single forum that can provide direction to the government about the effects of its actions, to promote uniformity of decisions, and avoid runaway verdicts against the government by pro-plaintiff circuit courts...." Erica M. Eisinger, *Annual Survey of Michigan Law, June 1, 1998 -- May 31, 1999*, 46 Wayne L Rev 485, 490 (2000). This is consistent with this Court's observation that "the Court of Claims is able to keep other branches of government informed with regard to the financial consequences of actions against the state." *Silverman*, *supra*, at 220 n3, citing MCL 600.6458 and MCL 600.6461.

Continued from previous page.
(savings bank articles of incorporation may protect director from personal liability for "monetary damages"); MCL 487.13504(2) (bank articles of incorporation may protect director from personal liability for "monetary damages"); MCL 493.56(2) (providing means to protect borrowers from "monetary damages"); MCL 500.5008(4) (articles of incorporation may protect directors from personal liability for "monetary damages"); MCL 550.1211a (10) (aggrieved covered individual may bring action for "actual monetary damages"); MCL 550.1402 (11) (aggrieved member may bring action "for actual monetary damages"); MCL 600.5531(g) ("[p]rospective relief" defined as "all relief other than monetary damages").

[22] *See, e.g.*, MCL 18.1353e(1) (appropriating and transferring funds to pay "money damages"); MCL 436.1801(10) (section provides exclusive remedy for "money damages" against licensee); MCL 450.1209(1)(c) (articles of incorporation may limit director's liability for "money damages"); MCL 559.208 ("action for money damages and foreclosure may be combined in 1 action"); MCL 559.212(4)(b) (co-owners may bring action for "money damages" against tenants or nonco-owners); MCL 600.2919(3)(c) (court may order trespassers to pay "money damages"); MCL 600.8371(8) (setting filing fees for civil actions seeking relief "other than money damages"); MCL 780.773 ("[n]othing in this article shall be construed as creating a cause of action for money damages against the state"); MCL 780.800 (same); MCL 780.832 (same).

The actions of Parkwood's own lawyers serve to illustrate why the legislature chose to invest the court of claims with exclusive jurisdiction over all claims *ex contractu* and *ex delicto* against the state. Indeed, although Parkwood initiated its action in Wayne County circuit court, another developer represented by the same lawyers as Parkwood, Meridian Meadows-Oxford Limited Partnership, subsequently brought a virtually identical suit in the court of claims. *Meridian Meadows-Oxford Limited Partnership v MSHDA*, court of claims case no 00-17590-CM.

This problem does not begin and end with Parkwood's lawyers, however. Indeed, Parkwood itself has claimed to this Court that "[t]he owners of 200 other similar projects are ... waiting for guidance as to their rights ... [to] [h]undreds of millions of dollars...." Parkwood's Response to MSHDA's Application for Leave to Appeal, p26. Accordingly, MSHDA faces the threat of multiple lawsuits in circuit courts around the state from developers, like Parkwood and Meridian, but for the fact that the court of claims has been granted exclusive jurisdiction.

This Court should apply the plain language of the court of claims act and hold that the act does indeed vest the court of claims with exclusive jurisdiction over Parkwood's *ex contractu* claim against MSHDA.

B. The Court of Appeals' Majority Opinion Conflicts With the Plain Language of the 1984 Amendments to the Court of Claims Act

Before 1984, the court of appeals had issued conflicting opinions whether the court of claims could issue declaratory judgments. *See, e.g., Grunow v Sanders*, 84 Mich App 578, 685; 269 NW2d 683 (1978) ("we hold that the Court of Claims has jurisdiction to render declaratory judgments"); *Dorfman v State Hwy Dep't*, 66 Mich App 1, 3; 238 NW2d 395, 396 (1975) ("[t]he court of claims cannot grant declaratory judgments").

Then in 1984, the legislature endeavored to remove all doubt that the court of claims had the power to issue declaratory judgments. It did so by amending the court of claims act.

This amendment took nothing from the broad grant of jurisdiction already given to the court of claims in MCL 600.6419. To the contrary, the amendment expressly states that, "*in addition to*" the jurisdiction already conferred upon the court of claims by section 600.6419, the court of claims also has jurisdiction over "*any*" demands for declaratory or equitable relief that are ancillary to claims filed pursuant to MCL 600.6419:

> *In addition to* the powers and jurisdiction conferred upon the court of claims by section [600.]6419, the court of claims has concurrent jurisdiction of *any* demand for equitable relief and *any* demand for a declaratory judgment when ancillary to a claim filed pursuant to section [600.]6419.

MCL 600.6419a (emphasis added).

Like MCL 600.6419, the amendment does not state that the court of claims only has jurisdiction over complaints that facially seek non-contingent awards of monetary damages. Nor does the amendment invest the *circuit courts* with jurisdiction over *ex contractu* claims against the state. Rather, the amendment specifically *limits* the circuit courts' jurisdiction to whatever jurisdiction had already been granted to the circuit courts in MCL 600.605:

> The jurisdiction conferred [on the court of claims] by this section is not intended to be exclusive of the jurisdiction of the circuit court over demands for declaratory and equitable relief *conferred by section [600.]605*.

MCL 600.6419a (emphasis added).[23]

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[23] In 1984 the legislature also amended MCL 600.6419(4). Like MCL 600.6419a, this amendment does not state that the court of claims only has jurisdiction over complaints that facially seek non-contingent awards of monetary damages. Nor does the amendment invest the *circuit courts* with jurisdiction over *ex contractu* claims against the state. Rather, the amendment merely provides that the court of claims act does not "*deprive* the circuit court ... of jurisdiction over ... proceedings for declaratory or equitable relief...." MCL 600.6419(4) (emphasis added).

This Court has already held that MCL 600.605 does not invest the circuit courts with jurisdiction over demands for declaratory relief against the state. In *Greenfield, supra*, a plurality of the justices concluded that the circuit court lacked jurisdiction to enter a declaratory judgment awarding the plaintiff contractual compensation in an amount to be determined later in the court of claims. *Greenfield, supra*, at 187. In finding that the circuit court lacked jurisdiction to enter a declaratory judgment against the state, the Court looked to MCL 600.605[24] and Article 6, section 13 of the state Constitution[25] -- the legislative and constitutional grants of jurisdiction to the circuit court -- and concluded that neither of these provisions vested the circuit court with jurisdiction. *Id* at 194-98. Accordingly, it held "that the circuit court was without jurisdiction to entertain the plaintiff's suit for ... declaratory judgment" against the state. *Id* at 198.

In summary, as discussed in the previous section of this brief, MCL 600.6419 vests the court of claims with "exclusive" jurisdiction over "all claims ... ex contractu ... against the state," and this includes an asserted "right to payment," even if the asserted right to payment is "contingent" or "unmatured." In turn, MCL 600.6419a broadly states that "*in addition to*" the jurisdiction already conferred upon the court of claims by section 600.6419, the court of claims also has jurisdiction over "*any*" demands for declaratory relief that are "*ancillary* to a claim filed pursuant to section [600.]6419." MCL 600.6419a (emphasis added).

Although the court of claims act does not define the word "ancillary," Black's Law Dictionary defines it as "[a]iding; attendant upon; describing a proceeding attendant upon or

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[24] MCL 600.605 provides: "Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605.

[25] Article 6, Section 13 of the Michigan Constitution of 1963 states: "The circuit court shall have original jurisdiction in all matters not prohibited by law...." Const 1963, art 6, § 13.

which aids another proceeding considered as principal. Auxiliary or subordinate." BLACK'S LAW DICTIONARY, *supra,* at 78. Accordingly, the court of claims has jurisdiction over demands for declaratory or equitable relief that are "attendant upon," or that "aid," an *ex contractu* claim asserting a "right to payment" from the state -- even if the asserted right to payment is "contingent" or "unmatured."

Therefore, even if Parkwood had not explicitly asserted a *non*-contingent right to payment (i.e., to "*use* the balance in the accounts *to* partially satisfy the mortgage debt" and "*for* ... paying the mortgage," *supra*), the fact that it has alternatively argued that is seeking a declaration that it has a *contingent* right to payment *in the event* it prepays the mortgage does nothing to circumvent the jurisdiction of the court of claims.

This Court should apply the plain language of the court of claims act and hold that the act does indeed vest the court of claims with exclusive jurisdiction over Parkwood's *ex contractu* claim against MSHDA.

III. THE COURT OF APPEALS' MAJORITY OPINION CONFLICTS WITH THE SUPREME COURT'S PRIOR HOLDING IN *SILVERMAN*

The Court has directed the parties to address the jurisdictional issue in the context of the court of claims act *and* the Court's prior decision in *Silverman*. In *Silverman*, the plaintiff filed a complaint in circuit court demanding a declaratory judgment (1) that he was a Michigan resident, and (2) therefore was entitled to a partial tuition refund from the defendant university. *Silverman*, *supra*, at 211-12. In finding that the court of claims had exclusive jurisdiction over the matter, this Court held: "The plaintiff ... wants a partial refund of the tuition paid to the University of Michigan. Plainly that claim, if it stood alone, would belong in the Court of Claims." *Id* at 216. The Court further held: "The plaintiff *phrases his request* for money damages as a request for a declaratory judgment that he is entitled to a refund. That does not

alter the *nature of the claim* – a demand for money damages." *Id* at 216 n7 (emphasis added). *Silverman* thus holds that a plaintiff cannot circumvent the plain language of the court of claims act, and jurisdiction of the court of claims, by artfully wording its complaint.

As a preliminary matter, although the Court has instructed the parties to address *Silverman*, there are two reasons why the facts of this case do not require employment of the analysis used in that Supreme Court precedent. First, as discussed in the previous section of this brief, the legislature clearly conferred exclusive jurisdiction to the court of claims over all contractual claims against the state. Parkwood's claim against MSHDA falls squarely within that grant of jurisdiction. *Supra.* Second, Parkwood's complaint contains an undisguised contractual claim of a right to "*use* the balance in the accounts" immediately, and not conditionally. Appendix at 67a, ¶ 17 (emphasis added). Similarly, s*ee also*, Appendix at 103a, p10. Underscoring the fact that Parkwood is seeking an immediate award of money, Parkwood's complaints explicitly set forth the precise balances that were in the accounts shortly before filing. Appendix at 65a, 72a-73a, 77a, all at ¶ 9. Hence, this Court need not look behind Parkwood's complaint to confirm that the court of claims had exclusive jurisdiction to decide the claims which it asserts.

However, were this Court to determine it necessary to engage in the analysis set forth in *Silverman*, it would remain clear that the court of claims had jurisdiction over Parkwood's claim against MSHDA. In *Silverman,* this Court held that the plaintiff could not evade the court of claims act by phrasing its claim for money as a claim for declaratory relief. *Silverman*, *supra*, at 216 n7. Parkwood seeks to evade the court of claims by claiming two different and inconsistent things at once. In particular, Parkwood (1) claims on the one hand that it is merely seeking declaratory relief because it doesn't want the money *unless* it first prepays the mortgage

(appendix at 68a, 75a, 80a), (2) even as it acknowledges on the other hand that it's really asking the court to award it the money *now -- for the purpose of* prepaying the mortgage (appendix at 67a, ¶ 17; appendix at 103a). If a court is to interpret a statute in accordance with the plain language chosen by the legislature, it ought not permit that language to be avoided by artfully written complaints. However many different ways Parkwood may choose to style its complaint, or attempt to characterize what it is really seeking, Parkwood cannot evade the jurisdiction of court of claims over its *ex contractu* claim against MSHDA.

The holding of *Silverman* -- that a court should look beyond the plaintiff's artfully worded complaint in order to determine the relief sought -- is by no means a new or unusual principle. *See, e.g., Minarik v State Hwy Comm'r*, 336 Mich 209, 213; 57 NW2d 501 (1953) (court may consider the complaint, together with testimony at a summary disposition hearing, to determine relief sought). *See also Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998) ("[i]n determining jurisdiction, this Court will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim"); *In re Mahoney Trust*, 153 Mich App 670, 678; 396 NW2d 494 (1996) ("[t]his Court will not be bound by a party's choice of labels for its action where to do so would put form over substance").

This principle is consistent with the fact that *every* contractual claim for monetary relief necessarily requires a court's determination (or declaration) that money held by one party rightfully belongs to the other. It would be a strange result indeed if claimants against the state could avoid the jurisdiction of the court of claims by simply asserting that they only want the money if the court should "declare" that they are entitled to it.

In the present case, a majority of the appellate panel refused to acknowledge the holding of *Silverman* that a court must look beyond mere labels and ascertain the actual nature of a

plaintiff's complaint. The court of appeals failed to look beyond the labels used in Parkwood's pleading and ascertain that Parkwood claims a contractual right to money from the state, and not merely declaratory relief. This was clearly illustrated when the court of appeals reasoned:

> The *complaint* did not request monetary damages.... Here, plaintiff's *complaint* only sought a declaratory judgment regarding the substantive issue in dispute.... [P]laintiff's *complaint* did not request monetary damages anywhere in its *complaint*.... [P]laintiff's *complaint* before the Court of Claims did not request monetary damages.

Appendix at 105a-106a (emphasis added). In refusing to look beyond the title of Parkwood's complaint, the court of appeals' decision conflicts with the holding of *Silverman*.

The court of appeals' departure from this Court's holding in *Silverman* is made clear in an additional way. In *Silverman,* this Court expressed its disagreement with another court of appeals decision that, in this Court's judgment, construed the court of claims' jurisdiction too narrowly. *See Silverman*, *supra*, at 215-16. In that case, *Mooahesh v Dep't of Treasury,* the plaintiff sought a return of the tax monies paid on his lottery winnings. 195 Mich App 551, 557-62; 492 NW2d 246 (1992). At the time the case was decided by the circuit court, the plaintiff's claims apparently no longer included a claim for money damages. Instead, as viewed by the court of appeals:

> The circuit court, upon due consideration, concluded that plaintiff *was not seeking money damages*, but rather a determination whether it was constitutional to take plaintiff's property and a return of property taken improperly. We believe that the circuit court's analysis was correct. The relief plaintiff seeks is more in the nature of an equitable remedy than damages. Plaintiff does not seek damages for an unrelated injury, but rather the return of money allegedly properly belonging to him.

Mooahesh, *supra*, at 559 (emphasis added).

Like the majority of the appellate panel in the present case, the court of appeals in *Mooahesh* concluded that the absence of a money damage claim made exercise of the circuit court's equitable jurisdiction appropriate:

> Thus, the Court of Claims did not have exclusive jurisdiction; the claims for equitable relief were properly brought in the circuit court.

Id.

This Court made it plain that it disagreed with the *Mooahesh* panel's analysis of the court of claims' jurisdiction: "... we do not agree with the manner in which the *Mooahesh* panel analyzed [the court of claims jurisdictional statute]." *Silverman*, *supra*, at 216. The Court also made it plain *why* it disagreed with the court of appeals:

> The plaintiff *phrases* his request for money damages as a request for a declaratory judgment that he is entitled to a refund. That does not alter the *nature* of the claim – a demand for money damages

Id at 218 n7 (emphasis added). The Court thus emphasized that the actual nature of the claim, not the style in which it is pled, should govern the jurisdictional issue.

In all three cases -- *Silverman, Mooahesh*, and the matter at bar -- the plaintiff sought monies that, it was contended, belonged to plaintiff. Mr. Silverman sought a tuition refund, Mr. Mooahesh sought a tax refund, and Parkwood seeks monies in the Disputed Accounts. Under *Silverman*, the claims of all three of the plaintiffs belong in the same court -- the court of claims. This Court should, therefore, reverse the decision of the court of appeals.

Despite the foregoing, Parkwood pins its hopes on the following sentence in the *Silverman* decision: "A complaint seeking only equitable or declaratory relief must be filed in circuit court." *Silverman*, *supra*, at 217. This sentence is inapplicable here, because, given the plain language of the court of claims act, discussed *supra*, the sentence can only apply to actions

that, unlike Parkwood's, do not include any "claims ... *ex contractu* [or] *ex delicto* ... against the state...." MCL 600.6419(1)(a). The sentence might, by way of example, apply to an equitable claim to prevent the state from closing or razing a state facility, or to declare that the state must issue plaintiff a permit of some kind. In contrast to those examples, Parkwood's complaint and other court filings reveal that Parkwood is, in fact, asserting a contractual claim to money from the state.[26]

If the Court finds that the sentence -- or, for that matter, the *Silverman* Court's reference to "money damages," a term that appears nowhere in the court of claims act itself -- does not square with the plain language of the act, then the Court should simply decline to apply it here. *See, e.g., People v Petit,* 466 Mich 624, 634; 648 NW2d 193 (2002) ("this Court will not close its eyes to a possible error it may have committed in the past"), quoting *Wilson v Doehler-Jarvis*, 358 Mich 510, 514; 100 NW2d 226 (1960). Instead, the Court should simply apply the plain language of the court of claims act and find that the court of claims had jurisdiction because Parkwood has asserted an *ex contractu* claim against MSHDA for an immediate right to money.

IV. THE COURT OF APPEALS' MAJORITY OPINION CONFLICTS WITH THE DECLARATORY JUDGMENT COURT RULE AND A PRIOR HOLDING OF THE COURT OF APPEALS

Michigan's declaratory judgment rule -- a rule that the court of appeals majority did not address -- confirms that the court of claims had jurisdiction over this case. That rule, which

[26] *Silverman* was a case where the plaintiff sought *both* declaratory relief and an award of money. Hence the sentence on which Parkwood relies -- which refers to cases which *only* seek injunctive or declaratory relief -- was unnecessary for the actual holding, and there is no need to apply it here. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 597-98; 374 NW2d 905 (1985) (relying on the "well-settled rule that statements concerning a principle of law not essential to determination of the case are obiter dictum and lack the force of an adjudication").

applies to the court of claims,[27] states, in part:

> (1) In a case of actual controversy *within its jurisdiction*, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.
>
> (2) For the purpose of this rule, an action is considered within the jurisdiction of a court *if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.*

MCR 2.605(A) (emphasis added). This rule stands for the proposition that a court may issue a declaratory judgment if it has jurisdiction of the underlying controversy. *See also* MCR 2.605 at 1985 Staff Comment ("while any court of record has the power to enter a declaratory judgment, *it may do so only in a case of which it would* ***otherwise*** *have jurisdiction*") (emphasis added).

The rule also takes into account the practical reality that declaratory judgment actions often do, in fact, result in awards of monetary damages. *See, e.g.*, MCR 2.605(F) (a court may grant "[f]urther necessary or proper relief based on a declaratory judgment"); MCR 2.601(A) ("every final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings").

Consistent with this analysis, in *77th Dist Judge v Michigan*, 175 Mich App 681; 438 NW2d 333 (1989), the court of appeals recognized that the court of claims may entertain a claim for declaratory judgment "if the underlying dispute or controversy is of a nature lending itself to an *eventual* remedy in money damages against the state or one of its branches." *Id* at 700 (emphasis added).

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[27] MCL 600.6422 states, in part: "Practice and procedure in the court of claims shall be in accordance with the statutes and court rules prescribing the practice in the circuit courts of this state, except as herein otherwise provided."

The declaratory judgment rule and *77th Dist Judge* are entirely consistent with the plain language of the court of claims act itself. As previously discussed, MCL 600.6419 vests the court of claims with exclusive jurisdiction over all claims *ex contractu* against the state. As discussed, the plain and ordinary meaning of "claim" includes an asserted right to payment, even if the asserted right to payment is contingent or unmatured.

Even if Parkwood were not seeking a non-contingent award of the money *so* that it can pay down the mortgage -- which it clearly is (appendix at 67a, ¶ 17; appendix at 103a) -- Parkwood alternatively seeks an *eventual* award of the monies in the Disputed Accounts *when* it fully repays the loan. Specifically, Parkwood alleges that it first needs a declaration "that Plaintiff shall be entitled to sole possession of the accounts *at the time Plaintiff pays the full balance due under Defendant's mortgage.*" Appendix at 68a (emphasis added). Implicit in this quote is the assumption that if Parkwood obtains such a declaration, Parkwood will then seek an award of the monies in the disputed accounts in order to pay the balance due on the mortgage. *77th Dist Judge* and the declaratory judgment rule therefore apply. Because Parkwood at a minimum is seeking an eventual award of monies, the court of claims has jurisdiction.

The court of appeals majority in our case apparently failed to take into account that Parkwood's requested relief at a minimum would lead directly to an eventual award of money damages. *See id.* Instead, as discussed, the court of appeals ignored the fact that Parkwood is seeking money, and noted that Parkwood's complaint sought declaratory relief. Appendix at 105a-106a. The court of appeals' decision, therefore, is in conflict with *77th Dist Judge* and the declaratory judgment rule. This Court should reverse the court of appeals' decision.

CONCLUSION

The Court should reverse the opinion of the two-judge majority. The majority erred by construing too narrowly the court of claims act, which grants to the court of claims exclusive subject matter jurisdiction over contractual disputes against the state. This erroneous construction gives rise to three separate and independent bases for reversal. In particular, the majority's construction of the court of claims act conflicts with: (1) the plain language of the court of claims act; (2) the Supreme Court's decision in *Silverman*; and (3) MCR 2.605(A) and a well-reasoned decision of the court of appeals. The Court should reverse the opinion of the two-judge majority for all three of these separate and independent reasons.

Respectfully submitted,

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